

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 567 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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INDIAN OVERSEAS BANK

Versus

ORIENTAL INDUSTRIES  
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Appearance:

MR AC GANDHI for Petitioner

None present for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/02/2000

ORAL JUDGEMENT

#. Heard learned counsel for the petitioner.

#. In this revision application, the prayer has been  
made for quashing and setting aside of the order dated

23/12/91 below Exh.168 and 170. Alternative prayer has been made for direction to the defendant-respondent to pay requisite court fees on the amount of set-off / counter claim.

#. The defendant-respondent under their application Exh.168 prayed for adding the issues which arise from the pleadings of the parties. Exh.170 application is filed by the plaintiff-petitioner praying therein that the set off / counter claim of the defendant-respondent be not allowed. Alternative prayer has been made for direction to the defendant-respondent to pay the requisite court fee.

#. The Trial Court on the application of the defendant-respondent recasted the issues and to this order no exception can be made. It is only interlocutory order and against which at this stage no interference can be made. The case of the petitioner does not fall under any of the clauses (a), (b) and (c) of subsection (1) of Section 115 of the Code of Civil Procedure. Otherwise also such order is always open to the correction on challenge by the plaintiff-petitioner if necessary arises in the appeal against the final decision given in the suit. So far application of plaintiff-petitioner Exh.170 is concerned the Trial court has not committed any error in rejecting the same. For this claim of the defendants-respondents the plaintiff-petitioner has all the right to raise issues in trial court both regarding maintainability of counter claim as well as payment of court fees. On this interlocutory application no such points can be decided, though it is a different matter that the trial court has undertaking this exercise. Be that as it may. This part of the order does not call for any interference of this court under Section 115 of the Code of Civil Procedure as in case if the petitioner fails in the suit while challenging the final decree it has all right to challenge that order also in the appeal.

#. It is really shocking that the bank which has filed a suit for recovery of its amount from the defendants-respondents itself is delaying trial of the suit. This court has not stayed the proceedings of the suit and there is all possibility that by now the suit itself would have been disposed of which is of the year 1983.

In the result, this revision application fails and the same is dismissed. Rule is discharged. As none put appearance for the respondents no order as to costs. The trial court if the suit has not already been decided

shall decide the same within a period of six months from the date of the receipt of the writ this order. The dismissal of this revision application will not come in the way of the petitioner if occasion arise and it consider necessary to challenge the impugned order of the court below in the appeal against final decision of the trial court.

(S.K.Keshote, J.)

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